

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 6, 2006 Session

BEHROUZ AMINI v. CTI PET SYSTEMS, INC., ET AL.

**Appeal from the Circuit Court for Knox County
No. 2-527-04 Harold Wimberly, Judge**

No. E2005-01442-COA-R3-CV - FILED APRIL 24, 2006

On January 15, 2002, Behrouz Amini (“Plaintiff”) filed a lawsuit against the defendants alleging, *inter alia*, that he was wrongfully terminated on January 15, 1999. The defendants filed a motion to dismiss claiming that the one year statute of limitations for bringing a wrongful termination claim had expired. Plaintiff then voluntarily nonsuited the wrongful termination claim, but refiled that claim within one year of the nonsuit. The defendants again filed a motion to dismiss arguing that the statute of limitations had expired. The Trial Court agreed and dismissed the lawsuit. Plaintiff appeals claiming the statute of limitations was tolled because of the defendants’ fraudulent concealment. We affirm the judgment of the Trial Court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Circuit Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and SHARON G. LEE, JJ., joined.

Behrouz Amini, *pro se* Appellant.

J. Chadwick Hatmaker and Robert L. Vance, Knoxville, Tennessee, for the Appellees CTI PET Systems, Inc., d/b/a CPS Innovations, CTI Molecular Imaging, Inc., James Kelly Milam and Terry Douglass.

OPINION

Background

Plaintiff was employed for over six years as a senior research scientist for CTI, Inc., a corporation now known as CTI Molecular Imaging, Inc. (“CTI”). Plaintiff’s employment with CTI was terminated abruptly on January 15, 1999. Plaintiff thereafter filed at least three lawsuits against CTI, CTI Pet Systems, Inc. d/b/a CPS Innovations (“CPS”), James Kelly Milam, and Terry Douglass (“Defendants”). James Kelly Milam (“Milam”) was Plaintiff’s supervisor and a Vice President of CTI. Terry Douglass (“Douglass”) was CTI’s President and Chairman of the Board.

The first two lawsuits filed by Plaintiff were consolidated into one action and, like the present case, were filed in the Knox County Circuit Court.¹ The first lawsuit has generated one appeal already. *See Amini v. CTI, Inc.*, 185 S.W.3d 415 (Tenn. Ct. App. 2005). In the first lawsuit, Plaintiff alleged that when his employment was terminated, Defendants improperly converted various items of personal and professional property, as well as Plaintiff’s stock options. *Id.* at 417-18. The Trial Court granted summary judgment to all Defendants on Plaintiff’s claim that they improperly converted his stock options. The Trial Court also granted Defendants CPS, Milam, and Douglass summary judgment on all of Plaintiff’s claims. The Trial Court denied Defendant CTI’s motion for summary judgment on Plaintiff’s claim that CTI converted Plaintiff’s technical materials and wrongfully refused to compensate him for revising two articles post-termination. *Id.* at 418. We granted a Tenn. R. App. P. 9 interlocutory appeal in the first lawsuit and reversed the grant of summary judgment on Plaintiff’s claim asserting Defendants had improperly converted his stock options. We also reversed the grant of summary judgment to Milam and Douglass on Plaintiff’s claims against them personally asserting that they converted personal and professional materials. We affirmed the grant of summary judgment on Plaintiff’s claims against Milam and Douglass involving post-termination compensation for revising two articles inasmuch as Plaintiff admitted that claim properly was against only his employer, CTI. *Id.* at 419-422.

In the first lawsuit, in addition to the claims referenced above, Plaintiff also alleged that he was wrongfully terminated and discriminated against. Very early on in that litigation, the lawsuit was removed to federal district court. While the lawsuit was in federal district court, Defendants filed a motion to dismiss claiming Plaintiff’s wrongful termination and discrimination claims were barred by the applicable one year statute of limitations. Although these documents are not in the current record on appeal, Plaintiff’s response to that motion is. In his *pro se* response filed on April 3, 2002, Plaintiff stated:

Comes the Plaintiff and file (sic) this response to the Defendants’ Motion to Dismiss. After reviewing the Defendants’ arguments, the Plaintiff agrees that the statue (sic) of limitations bars his claims on employee discrimination, and illegal termination. As

¹ For ease of reference, we will refer to the consolidated lawsuit as the “first lawsuit.”

a result, the Plaintiff respectfully requests that this Court dismiss the above claims....

Less than one month later and before the federal district court took Plaintiff up on his invitation to dismiss his “employee discrimination” and “illegal termination” claims, Plaintiff filed another response to Defendants’ motion to dismiss. In the second response, Plaintiff was not quite as eager to admit the statute of limitations had run. With regard to the “employee discrimination” and “illegal termination” claims, Plaintiff then stated:

In cases that a Defendant conceals the cause of actions, it is known that the court may allow the statue (sic) of limitations to be extended. In my case, Milam illegally invaded my office and either destroyed or illegally held any documents that belonged to me which could be used against him (I will prove this to be the fact.) Because of similarity of my case with the concealment of cause of actions I believed that this Court might allow the statue (sic) of limitations for the above claims to be extended. Since I was not certain about this issue, I admitted that the statue (sic) of limitation bars the above claims.

After concluding that it lacked subject matter jurisdiction because no federal question was squarely presented, the federal district court remanded the case to state court without ever acting on Defendants’ motion to dismiss. Thereafter, Plaintiff voluntarily nonsuited his wrongful termination and employment discrimination claims. On August 25, 2003, the Trial Court entered an order granting Plaintiff’s request for a voluntary nonsuit without prejudice on these two claims. Plaintiff then proceeded with the remaining claims which became the subject of the appeal in the first lawsuit.

Plaintiff later filed the present *pro se* lawsuit on August 25, 2004. Plaintiff’s complaint is difficult to understand and contains numerous references to an affidavit filed in the first lawsuit. The record on appeal does not contain any such affidavit attached to the complaint. In any event, Plaintiff claims in the present case that when he was terminated, Defendants raided his office and seized all of Plaintiff’s employment related documents. Plaintiff maintains that he made several attempts to obtain the return of these documents from Defendants, all to no avail. Plaintiff claims he was told by Defendants that a terminated employee has no rights. Plaintiff then claims Defendants’ actions constituted “fraudulent concealment of Plaintiff’s employment documents to toll the statute of limitation for wrongful termination.” Plaintiff asserted that “Defendants by their actions wrongfully terminated Plaintiff in violation to (sic) Tennessee and Federal Statutes and Rules.” Plaintiff’s complaint does not, however, set forth which “Tennessee and Federal Statutes and Rules” he claims to have been violated. Plaintiff sought five years of lost wages at a total of \$605,000, and punitive damages in the amount of \$5,000,000. As Plaintiff’s complaint never mentions “discrimination”, we can only assume he intentionally abandoned that claim.

Defendants filed a motion to dismiss, again asserting that Plaintiff's claims were barred by the applicable one year statute of limitations. Alternatively, Defendants CPS, Milam, and Douglass claimed Plaintiff's complaint failed to state a claim upon which relief could be granted as to them. Although some pertinent documents from the first lawsuit are not contained in the current record on appeal, the parties are in agreement that: (1) Plaintiff initially brought a "wrongful termination" claim in the first lawsuit; (2) the wrongful termination claim was not filed within one year of Plaintiff's termination; (3) the wrongful termination claim was voluntarily dismissed; and (4) the present lawsuit was filed within one year from the date the nonsuit was granted. Thus, the critical issue before the Trial Court was whether the first lawsuit was filed within the applicable statute of limitations because the parties agreed that the present lawsuit was filed within one year after the voluntary dismissal, as permitted by the Saving Statute, Tenn. Code Ann. § 28-1-105.

Following a hearing, the Trial Court granted Defendants' motion to dismiss after concluding that the one year statute of limitations had run and Plaintiff's wrongful termination claim was barred. In making this ruling, the Trial Court specifically relied on, among other things, Plaintiff's responses to Defendants' motion to dismiss filed in federal district court. Plaintiff now appeals with the dispositive issue being whether the Trial Court erred in granting Defendants' motion to dismiss because Defendants' alleged fraudulent concealment tolled the one year statute of limitations.

Discussion

Since matters outside the pleadings were considered by the Trial Court when it granted Defendants' motion to dismiss, we will treat Defendants' motion as a motion for summary judgment in accordance with Tenn. R. Civ. P. 12.02.² In *Teter v. Republic Parking System, Inc.*, 181 S.W.3d 330 (Tenn. 2005), our Supreme Court recently reiterated the standards applicable when appellate courts are reviewing a motion for summary judgment. The Court stated:

The purpose of summary judgment is to resolve controlling issues of law rather than to find facts or resolve disputed issues of fact. *Bellamy v. Fed. Express Corp.*, 749 S.W.2d 31, 33 (Tenn. 1988). Summary judgment is appropriate only when the moving party demonstrates that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. See Tenn. R. Civ. P. 56.04; *Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). In reviewing the record, the appellate court must view all the

² In relevant part, Rule 12.02 provides that if, "on a motion asserting the defense numbered (6) to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

evidence in the light most favorable to the non-moving party and draw all reasonable inferences in favor of the non-moving party. *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000). And because this inquiry involves a question of law only, the standard of review is de novo with no presumption of correctness attached to the trial court's conclusions. See *Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995).

Teter, 181 S.W.3d at 337.

In *Weber v. Moses*, 938 S.W.2d 387 (Tenn. 1996), the Supreme Court determined that the tort of retaliatory discharge was governed by the one year statute of limitations found in Tenn. Code Ann. § 28-3-104. The Court also determined in that case that the plaintiff's statute of limitations began to run when he was told that his employment contract was being terminated, not when the actual termination took place. According to *Weber*:

[T]he statute of limitations precludes Weber's retaliatory discharge claim. A claim for retaliatory discharge is a tort action which is governed by the general tort statute of limitations which requires that a lawsuit be "commenced within one (1) year after the cause of action accrued...." Tenn. Code Ann. § 28-3-104 (1980 Repl. and Supp. 1996); *Headrick v. Union Carbide Corp.*, 825 S.W.2d 424 (Tenn. App. 1991); cf. *Van Cleave v. McKee Baking Co.*, 712 S.W.2d 94 (Tenn. 1986).

It is well-established that a tort action accrues when the plaintiff knows, or in the exercise of reasonable care and diligence should know, that an injury has been sustained. *Wyatt v. A-Best, Co., Inc.*, 910 S.W.2d 851, 854 (Tenn. 1995). While a prerequisite to the running of the statute of limitations is plaintiff's reasonable knowledge that an injury has been sustained, a plaintiff is not entitled to delay filing until all injurious effects or consequences of the actionable wrong are fully known. *Id.* at 855.

Weber sustained the injury he now alleges when Jefferson Pilot decided to terminate his sales manager contract effective August 31, 1992. Moreover, he became aware of the injury when he was orally advised in early August of Jefferson Pilot's decision. Actual termination of the contract is nothing more than the consequence of Jefferson Pilot's earlier decision. The statute of limitations, therefore, precludes Weber's retaliatory discharge claim.

Weber, 938 S.W.2d at 393.

Applying the rationale of *Weber* to the present case, it is clear that Plaintiff's wrongful termination claim is governed by a one year statute of limitations which began to run when Plaintiff knew or with reasonable care and diligence should have known that an injury had been sustained, i.e., January 15, 1999, when he was unequivocally told he was fired.

In *Fahrner v. SW Manufacturing, Inc.*, 48 S.W.3d 141 (Tenn. 2001), the Supreme Court elaborated on its holding in *Weber* as follows:

The rationale of *Weber* is simply that an employee "discovers" that an injury has been sustained for purposes of the statute of limitations when the employer provides unequivocal notice of the adverse employment action – in this case, termination. At this point, of course, the employee may not know the true reason for the employer's adverse employment decision, or other facts that would tend to show the employer has behaved unlawfully. "We have stressed, however, that there is no requirement that the plaintiff actually know the specific type of legal claim he or she has, or that the injury constituted a breach of the appropriate legal standard." *Kohl & Co.*, 977 S.W.2d at 532-33 (citing *Shadrick v. Coker*, 963 S.W.2d 726, 733 (Tenn. 1998)). Rather, the employee, through his lawyer, must investigate the circumstances surrounding the employer's decision, and he has the time given to him by the legislature to complete this investigation and then file a complaint--in this case, one year. As another court has put it, "when an employee knows that he has been hurt and also knows that his employer has inflicted the injury, it is fair to begin the countdown toward repose." *Morris v. Gov. Dev. Bank of Puerto Rico*, 27 F.3d 746, 750 (1st Cir.1994).

Fahrner, 48 S.W.3d at 144-45.

Plaintiff claims, however, that when Defendants told him he had no rights and precluded him from taking any employment related documents with him, they effectively "fraudulently concealed" his cause of action from him. The Supreme Court in *Fahrner* also discussed how allegations of fraudulent concealment can impact the running of a statute of limitations. According to *Fahrner*:

While fraudulent concealment usually denotes a common law tort, see *Chrisman v. Hill Home Dev., Inc.*, 978 S.W.2d 535, 538-39 (Tenn. 1998); *Simmons v. Evans*, 185 Tenn. 282, 285, 206 S.W.2d 295, 296 (1947), it also has relevance in the statute of limitations context. By definition, a fraud entails some misrepresentation or deception that makes its victim believe he has been treated fairly, when in fact he has been deceived. If successful, therefore, a

defendant's fraudulent act, depending on the particular facts of the case, may prevent a plaintiff from knowing he has been injured until well after the statute of limitations period has expired. To prevent this from occurring, Tennessee law has long recognized that the statute of limitations does not begin to run until the plaintiff, exercising reasonable diligence, discovers the fraud which the defendant wrongfully concealed. *See, e.g., Vance v. Schulder*, 547 S.W.2d 927, 930 (Tenn. 1977) (collecting cases).

Fraudulent concealment often arises in fraud cases, perhaps because the defendant having deceived the plaintiff once thinks nothing of deceiving him further, but it is not so confined. We have also applied the doctrine in a negligent building construction case, *see Soldano v. Owens-Corning Fiberglass Corp.*, 696 S.W.2d 887 (Tenn. 1985), and, more recently, in medical malpractice cases, *see Shadrick*, 963 S.W.2d at 735-37 (discussing Tenn. Code Ann. § 29-26-116, a statute of repose containing a fraudulent concealment exception); *Benton v. Snyder*, 825 S.W.2d 409, 413-14 (Tenn. 1992) (same). The underlying cause of action is not the critical issue; *what matters is that the defendant has taken steps to prevent the plaintiff from discovering he was injured.*

Fahrner, 48 S.W.3d at 145-46 (emphasis added).

Fahrner establishes that allegations of fraudulent concealment in the context of a statute of limitations occurs when the defendant fraudulently conceals from a plaintiff the fact *that an injury has occurred*. In order for Plaintiff to successfully argue at this point in the litigation that the statute of limitations was tolled, he would have to create a genuine issue of material fact as to whether Defendants fraudulently concealed from him the fact that he had been injured. Since Plaintiff's alleged "injury" was his wrongful termination from employment, Plaintiff would have to create a genuine issue of material fact that Defendants fraudulently concealed from him the fact that he had been fired. The undisputed facts, however, show the exact opposite to be true. Plaintiff states in his complaint:

When Plaintiff arrived at 11:00 a.m., on January 15, 1999 in Vice-President Kelley Milam's office, Karen Davies, the human resources manager for CTI, was present with Kelly Milam and Kelly Milam at that time told Plaintiff that he was terminated.

Based on the undisputed material facts in this case, Plaintiff undoubtedly knew that he was being terminated on January 15, 1999, and Defendants did absolutely nothing to conceal that fact from him. Further, Plaintiff knew that Defendants had seized all of his employment related documents. There is no genuine issue as to any material fact as to whether Defendants fraudulently

concealed from Plaintiff the fact that he had been injured on the day he was fired. Therefore, Plaintiff's one year statute of limitations began to run on that date, and we reject Plaintiff's argument that the doctrine of fraudulent concealment operates in any way to toll the one year statute of limitations. The Trial Court, therefore, correctly determined that Plaintiff's one year statute of limitations for a wrongful termination claim had expired.³ Due to our resolution of the statute of limitations issue, all remaining issues are pretermitted.

Conclusion

The judgment of the Trial Court is affirmed, and this case is remanded to the Trial Court for collection of the costs below. Costs on appeal are assessed to the Appellant, Behrouz Amini.

D. MICHAEL SWINEY, JUDGE

³ Due to our conclusion that the statute of limitations for a wrongful termination claim has run, we express no opinion on whether Plaintiff actually stated a claim for wrongful termination. We assume, without deciding, that he did. It is worth noting that in *Fahrner*, the Supreme Court also discussed how the doctrine of equitable estoppel can toll a statute of limitations. Plaintiff in the present case did not argue to the Trial Court that this doctrine had any impact on the running of the statute of limitations. Likewise, Plaintiff does not even mention this doctrine on appeal. Accordingly, we express no opinion on what effect, if any, that doctrine would or could have on the statute of limitations issue.